

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O assessment on Mr X, Ms Y and their son who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002315-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X (and family)	Ms Y (wife)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1981	1983

### Family details

<b>Family members</b>	Master Z (son)
<b>Citizenship</b>	Country A
<b>Date of birth</b>	27 August 2009

<b>Ombudsman ID</b>	1002315-O1
<b>Date of DIBP's reports</b>	14 February 2017 and 15 August 2017
<b>Total days in detention</b>	1,276 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous assessment (1002315-O), the family has remained in community detention.
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### Recent visa applications/case progression

The Department of Immigration and Border Protection (the department) has advised that under current policy settings the family is not eligible to have their protection claims assessed in Australia and remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
15 August 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of the family while they remain temporarily in Australia for medical treatment.

## Health and welfare

### Mr X

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for multiple complex mental health concerns including a history of torture and trauma, an adjustment disorder, post-traumatic stress disorder (PTSD) and a major depressive disorder.

Mr X regularly accessed supportive counselling and was prescribed with medication.

On 5 November 2016 a psychologist advised that Mr X was not fit to return to an RPC. In February 2017 a psychologist reported that Mr X's thoughts are psychologically impacted by his ongoing knee pain and in March 2017 a psychiatrist noted that he experienced ongoing PTSD from his experiences in detention and fear of being returned to an RPC.

IHMS further advised that Mr X continued to receive treatment for back pain and an ongoing knee injury. Mr X attended physiotherapy and hydrotherapy sessions for his knee and his condition continued to be managed with prescribed medication. He was advised that he may require a total knee replacement, however he requested a further orthopaedic review to explore other treatment options. An appointment was scheduled for 13 September 2017.

5 November 2016	IHMS advised that Mr X threatened self-harm.
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### Ms Y

IHMS advised that Ms Y continued to receive treatment for multiple complex mental health concerns including a history of torture and trauma, depression, adjustment issues and anxiety.

Ms Y's condition was managed as per a mental health plan and she regularly attended psychological counselling sessions to improve parenting strategies and coping skills. A psychologist advised that Ms Y's condition was adversely impacted by the uncertainty regarding her family's potential return to an RPC. In December 2016 a psychologist recommended that Ms Y not be returned to an RPC due to her fragile mental health.

IHMS further advised that Ms Y was confirmed to be pregnant in July 2017 with an estimated date of delivery in March 2018. Her condition was monitored by a general practitioner (GP) and antenatal and obstetric providers.

### Master Z

IHMS advised that Master Z continued to receive treatment for multiple complex mental health concerns including an anxiety disorder with associated behavioural difficulties and incontinence. Master Z attended psychological counselling and a psychologist advised that Master Z's behavioural concerns were likely to be symptoms of trauma. The psychologist strongly recommended that he not be returned to an immigration detention facility, and especially not to an RPC. In October 2016 Master Z was reviewed at a specialist continence clinic and his mother subsequently reported improvements in his ability to manage his condition.

IHMS further advised that Master Z continued to be monitored by a GP for an inherited metabolic condition. In July 2017 Master Z was prescribed with medication and referred to a gastroenterology clinic after he presented to a GP with intermittent abdominal pain.

### **Ombudsman assessment/recommendation**

The family was detained on 26 July 2013 after arriving in Australia by sea and has been held in detention for a cumulative period of more than three and a half years.

The family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because the family arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of the family while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment (1002315-O) recommended that priority is given to exploring options to enable the resolution of the family's immigration status.

On 1 March 2017 the Minister noted the recommendation and advised that under current legislation and policy settings, the family remains subject to return to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that the family has medical conditions that require ongoing treatment.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose. The Ombudsman notes with serious concern the significant impact that prolonged detention has had on the family's mental health and recommendations from IHMS that the family not be returned to an RPC.

The Ombudsman notes that under current policy settings the family is not eligible to have their protection claims assessed by Australia and that without an assessment of the family's claims it appears likely they will remain in detention for a prolonged period.

The Ombudsman again recommends that priority is given to resolving the family's immigration status.